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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,625	12/30/2003	Brian Alan Grove	2043.033US1	9858
49845 7590 12/26/2008 SCHWEGMAN, LUNDBERG & WOESSNER/EBAY P.O. BOX 2938 MINNEAPOLIS, MN 55402				
EXAMINER DUNHAM, JASON B				
ART UNIT 3625		PAPER NUMBER		
NOTIFICATION DATE 12/26/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM

Office Action Summary

Application No.

10/749,625

Applicant(s)

GROVE ET AL.

Examiner

JASON B. DUNHAM

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-32 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 9/24/08
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Applicant amended claims 1-3, 6-7, 9-11, 14, 17-19, 22, 25-27, and 30 in the response filed September 12, 2008 in reply to the office action dated June 12, 2008. Claims 1-32 are pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-32 are rejected under 35 U.S.C. 102(b) as being anticipated by

Auction Arms (Reference U, PTO-892).

Referring to claim 1. Arms discloses a network based commerce system, said network commerce system comprising:

a processor coupled to a memory through a bus (page 1 disclosing an online commerce system); and

a fixed price setting process executed from the memory by the processor to:
determine that a high proxy bid is less than a reserve price, wherein the high proxy bid is the highest current proxy bid and the reserve price is the minimum price at which a seller is willing to sell an item, and in response to the determining, cause the processor to automatically publish at least one of a proxy bid information set by a proxy

bidder and the reserve price, wherein the proxy bid information includes the highest price that the proxy bidder is willing to pay for the item (page 7 disclosing basic style auctions where a seller is obligated to sell at a reserve price (i.e. fixed price) and the proxy bids are displayed).

Referring to claim 2. Arms further discloses a system wherein the fixed price process further causes the processor to automatically unpublish the proxy bid information upon the high proxy bid exceeding the reserve price (page 7 disclosing basic style auctions that inherently close once a reserve is met).

Referring to claim 3. Arms further discloses a system wherein the fixed price process further causes the processor to facilitate a request for an adjustment of a fixed price offer associated with the listing for the item, the request to be sent to the seller (page 7 disclosing Dutch style auctions allowing a seller to adjust offers).

Referring to claims 4-5. Arms further discloses a system wherein the publication is performed during or after the auction price setting process (page 7 disclosing a reserve style auction).

Referring to claim 6. Arms further discloses a system comprising automatically notifying the bidder when the reserve price is published (page 6 disclosing indication of a reserve price has been met).

Referring to claim 7. Arms further discloses a system causing the processor to publish the at least one of a proxy bid information and the reserve price for view by a specific buyer only (page 9 disclosing a watch list for specific buyers).

Referring to claim 8. Arms further discloses a system causing the processor, when publishing to display the maximum amount a buyer is willing to bid to purchase an item on the listing (page 8 disclosing a user entering a max bid).

Referring to claims 9-32. System, medium, and method claims 9-32 contain similar limitations to those in rejected system claims 1-8 above and are rejected under the same rationale.

Response to Arguments

Applicant's arguments with respect to claims 1-32 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is noted on the attached PTO-892.

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on September 24, 2008 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **JASON B. DUNHAM** whose telephone number is (571)272-8109. The examiner can normally be reached on M-F, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey A. Smith/
Supervisory Patent Examiner, Art
Unit 3625

JBD
12/19/08